

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

JUN 13 2008

DAVID J. MALAND, CLERK  
BY  
DEPUTY \_\_\_\_\_

TORY DAMON JOHNSON #750231 \*

APPLICANT, \*

V. \* CIVIL ACTION NO.

NATHANIEL QUARTERMAN, DIRECTOR\* 9:08cv109

T.D.C.J.-C.I.D. , \*

RESPONDENT. \*

APPLICANT MEMORANDUM OF LAW, FACT SUPPORTING  
28 USC §2241 APPLICATION HABEAS CORPUS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, TORY JOHNSON #750231, your pro se applicant in Cause sub iudice an notifies the Court of his pro-se status, bot being versed or learned in lawor theories of legal pleading and would therefore invoke protections of HAINES V. KERNER, 94 S. CT. 594 (1972) progeny thereof as initial standard of review in this Cause of action from GRIEVANCE PROCESS throughout Certificate of Service in final pleadings filed.

Additionally, APPLICANT avers he is properly before this Court via 28 USC § 2241. U.S. V. TUBWELL, 37 F.3d 175, 177 (5th Cir. 1994): MOURNING V. DRETKE, # 9:05 CV 247 (E. Dist. Tex. 2006); LOPEZ V. DIRECTOR, TDCJ-CID (E. Dist. Tex. 2005).

Discussion:

1) BLACK LAW DICTIONARY 2nd ED. SETS FORTH THE FOLLOWING DEFINITION OF THE LEGAL TERM "EVIDENCE" AS "(A) SOMETHING [INCLUDING TESTIMONY DOCUMENTS, AND TANGIBLE OBJECTS] THAT TENDS TO PROVE THE EXISTENCE

OR DIS-PROVE THE EXISTENCE OF AN ALLEGED FACT" ; (C) "THE COLLECTIVE MASS OF THINGS, TESTIMONY, EXHIBITS PRESENTED BEFORE A TRIBUNAL IN IN A GIVEN DISPUTE.", Comm. "EVIDENCE IS ANY MATTER OF FACTWHI WHICH IS FURNISHED TO A LEGAL TRIBUNAL, OTERWISE THAN BY REASONING OR A REFERENCE TO , WHAT IS NOTICED WITHOUT PROOF, AS THE BASIS OF INFERENCE IN ASCERTAINING SOME OTHER MATTER OF FACT." JAMES B. THAYER, "PRESUMPTIONS AND THE LAW OF EVIDENCE", 3 HARVARD LAWREV. 141, 142 (1889),2) APPLICANT HAS EXHAUSTED HIS STATE REMEDY VIA "GRIEVANCE/APPEAL PROCESS" (EXHIBIT II herewith) LERMA V. ESTELLE, 585 F.2d 1297. 1298-1299 (5th Cir. 1976); EX PARTE PALOMO ; 759 S.W. 2d 671, 674 (TX. CR. APP. 1988).

3) APPLICANT AVERS TO THE COURT THAT IN THE INSTANT CAUSE OF ACTION THE RESPONDENT HAS FAILED IN IT,S BURDEN TO PRODUCE ANY EVIDENCE AT THE CHALLENGED DISCIPLINARY HEARING THAT APPLICANT AND APPLICANT ALONE, , NONE OF THE OTHER 80 OFFENDERS LIVING ON SAME OPEN DORMITORY AREA, HAD ACTUAL KNOWLEDGE OF THE EXISTENCE OF ANY MARIJUAN/CONTRABANDFOUND IN THE "WINDOW FRAME ACCESSIBLE ONLY THROUGH OFFENDER SHACKLEFORD ASSIGNED CUBICLE AREA". THE SOME EVIDENCE STANDARD HAS NOT BEEN MET HERE. BROUSSARD V. JOHNSON 918 F. SUPP. 1040 (E. Dist. Tex. 2000) SEE ALSO : "AFFIDAVIT" OF TORY DAMON JOHNSON, EXHIBIT III HERWITH.

4) APPLICANT AVERS TO THS COURT HERE THAT THE RESPONDENT FAILED IN THEIR LEGAL BURDEN OF PROOF TO ESTABLISH THAT APPLICANT POSSESSED THE REQUISITE "INTENT TO POSSESS" THE CONTRABAND MARIJUANA HE WAS FOUND GUILTY OF POSSESSING. NEITHER WAS EVIDENCE INTRODUCED INDICATING EXISTENCE OF A CONSPIRACY BY APPLICANT TO POSSESS ALLEGED CONTRABAND MARIJUANA, HIDDEN OR OTHERWISE, IN A LIVING AREA ACCESSIBLE BY SOME 80 OTHER PRISON OFFENDERS.

IT IS WELL ESTABLISHED FEDERAL LAW THAT "MENS REA" IS A TOTALLY ESSENTIAL REQUIREMENT OF THE FEDERAL CONSTITUTION DUE PROCESS OF LAW CLAUSE APPLICABLE TO STATES THROUGH 14 TH AMENDMENT U.S. CONSTITUTION. APPLICANT, FROM THE BEGGINING OF HIS ARREST IN THIS CASE, HAS ASSERTED HIS TOTAL LACK OF ANY KNOWLEDGE OR INTENT TO POSSESS ANY CONTRABAND MARIJUANA. "MERE PRESENCE IN A LIVING AREA " ACCESSIBLE TO 80 OTHER LIKE SITUATED OFFENDERS (WHICH APPLICANT WAS NOT EVEN PRESENT AT TIME MARIJUANA WAS FOUND), DOES NOT, CANNOT SUSTAIN A FINDING OF GUILT THAT RESULTS IN ADVERSE AFFECTS TO APPLICANTS CONSTITUTIONAL RIGHTS OR EXERCISE OF APPLICANTS INSTITUTIONAL LIBERTY. SMITH V. RABALAIS, 659 F.2d 542-547; BROUSSARD V. JOHNSON, 253 F.3d 874 (5th Cir. 2001).

5) THE LEGAL STANDARD FOR DUE PROCESS IN PRISON DISCIPLINARY HEARINGS IS THAT THERE BE SOME EVIDENCE TO SUPPORT DISCIPLINARY DECISIONS. SUPERINTENDENT, MASS. CORR. INST. V. WALPOLE HILL, 472 U.S. 445 ; 105 S. Ct. 2768, 2774 (1985). WHETHER OR NOT THERE EXIST SOME EVIDENCE IS A QUESTION OF LAW REVIEWED DE NOVO. HUDSON V. JOHNSON, 242 F.3d 534, 535 (5th Cir. 2001) ; RICHARDS V. DRETKE, 394 F.3d 291, 292 (5th Cir. ).

6) IN "BROUSSARD" SUPRA. , THE COURT REASONED "PRISONERS RIGHTS TO PROCEDURAL DUE PROCESS VIOLATED BY RELIANCE ON CREDIBILITY OF INFORMANT WITHOUT INDEPENDENT EVALUATION" (as here) ; "COMPETENT EVIDENCE DID NOT SUPPORT FINDING OF GUILT" as here); "PRISONERS LOSS OF GOODTIME WHICH IS GRANTED BY STATUTE AND MAY BE FORFEITED ONLY FOR MIS-CONDUCT, IMPLICATES LIBERTY INTEREST PROTECTED BY DUE PROCESS CLAUSE" . "COMPETENT EVIDENCE OFFERED AT DISCIPLINARY HEARING IN WHICH PRISONERS WERE FOUND GUILTY

~~OF~~ 'POSSESSION OF CONTRABAND' INTENDED FOR USE IN ESCAPE DID NOT SUPPORT FINDING OF GUILT.", "TO SINGLE OUT PRISONERS FROM THREE SHIFTS OF 100 WORKERS (here 80) IN AREA IN WHICH BOLT CUTTERS (here marijuana) WERE FOUND DID NOT SUPPORT FINDING THAT PRISONERS SELECTED WERE PERSONS RESPONSIBLE FOR HIDING BOLT CUTTERS." (SEE EXHIBIT III, "AFFIDAVIT" of TORY DAMON JOHNSON; and "HEARING TAPE #4595" wherein CAPT. B. LAMB admits 'marijuana found in GENERAL AREA').

7) FURTHER, PLAINLY CONTRARY TO WOLFF V. McDONNELL, 478 U.S. 539 (1984) , RUIZ V. ESTELLE, 666 F.2d 854, 869 (5<sup>th</sup> Cir. 1982) CAPT. B. LAMB ACTED IN CAPACITY OF "CHARGING OFFICER" ; "INVESTIGATING OFFICER" ; "PARTIAL DISCIPLINARY HEARING OFFICER OBJECTIVELY DENYING ME "FAIR", "NEUTRAL", "IMPARTIAL " DISCIPLINARY PROCEEDING IN CASE # 20080141627. SEE: HEARING TAPE #4595 . side B, LINES 299-550.

8) CAPT. B. LAMB FURTHER VIOLATED MY RIGHTS TO DUE PROCESS OF LAW IN PRISON DISCIPLINARY HEARINGS BY DENYING ME 8 OFFENDERS TESTIMONY WHOM WERE WITNESSES AS TO WHEN AND WHERE AND HOW THE SUSPECT MARIJUANA WAS ACTUALLY FOUND. THESE WITNESSES WERE TIMELY, OBJECTIVELY REQUESTED AND WERE EASILY AVAILABLE AT EASTHAM UNIT AT TIME OF HEARING, NEVERTHELESS , DENIED BY CAPT. B. LAMB AT, DURING SAID HEARING WHEREIN CAPT. HAZEL ENGLISH KITCHENS WAS ALLEGED "HEARING OFFICER". REVIEW HEARING TAPE # 4595 FOR LAMB DENIALS..

9) CAPT. B. LAMB , ACTING IN CONCERT WITH CAPT. HAZEL KITCHENS ENGLISH DID ALSO DENY MY RIGHT TO CONFRONT OFFENDER REGINALD SHACKLEFORD, THE ALLEGED INFORMANT SUPPOSEDLY GIVING TESTIMONY

AGAINST ME WHEN , IN FACT, HIS IDENTITY WAS KNOWN ALL ALONG BY MANY OFFENDERS. HE WAS REASONABLY AVAILABLE FOR HEARING TESTIMONY ( although when found out that he FAILED urinalysis and I passed urinalysis SHACKLEFORD was immediately shipped to another TDCJ-CID unit).

10) CAPT. B. LAMB IN CONCERT WITH CAPT. HAZEL KITCHENS ENGLISH DID DENY MY REQUEST/RIGHT TO "FINGERPRINT ANALYSIS" OF ALLEGED MARIJUANA PACKAGE, CONTAINER THAT WAS CHARGED AS BEING IN MY OBJECTIVE POSSESSION. AKE V. OKLAHOMA, 470 U.S. 68 (1985), AND PROGENY... IN LIEU THEREOF , CAPT. B. LAMB TESTIFIED TO HIS PERSONAL, INDIVIDUAL, ONLY ANALYSIS OF SAID MARIJUANA "GREEN LEAFY SUBSTANCE" AS IN FACT BEING MARIJUANA WHEN IN TRUTH AND FACT NEITHER B. LAMB , NOR HAZEL K. ENGLISH HAD ANY PROFESSIONAL TRAINING ALLOWING FOR SUCH "FACT FINDING" . AKE V. OKLAHOMA, SUPRA. , WOLFF V. McDONNELL, SUPRA.. (NEITHER OFFICER QUALIFIED TO MAKE PROFESSIONAL EVALUATION ALLEGED "GREEN LEAFY SUBSTANCE" WAS IN FACT , MARIJUANA.. ANOTHER DUE PROCESS OF LAW VIOLATION

11) CAPTAIN HAZEL K. ENGLISH, ACTING IN CONCERT WITH CAPT. B. LAMB TO VIOLATE AND VIOLATING MY FEDERAL CONSTITUTIONAL RIGHTS TO SUBSTANTIVE DUE PROCESS OF LAW AND PROCEDURAL DUE PROCESS OF LAW DID KNOWINGLY AND WITH CRIMINAL INTENT FIND ME GUILTY OF POSSESSION OF MARIJUANA ABSENT REQUIRED SCIENTER (KNOWLEDGE OR INTENT) IN A MANNER CLEARLY INCONSISTENT WITH AND CONTRARY TO WELL ESTABLISHED U.S. SUPREME COURT AUTHORITIES BASED UPON AND ONLY UPON THE NON-COMPETENT , PLAINLY UNRELIABLE (SHACKLEFORD URINALYSIS TESTED POSITIVE FOR DRUG CONTENTS )(MY IDENTICAL URINALYSIS TESTED NEGATIVE FOR DRUG CONTENT)TESTIMONY OF REGINALD SHACKLEFORD . WOLFF, SUPRA. ; AKE , SUPRA. ; TEAGUE V. QUARTERMAN 482 F.3d 769 (5th Cir. 2007). ALSO "BROUSSARD" , SUPRA..

12) THE NON-COMPETENT STATURE OF EASTHAM /AGENCY EVIDENCE UTILIZED TO SUATAIN CONVICTION AGAINST ME IN DISCIPLINARY ACTION # 20080141627 RENDERED SUCH EVIDENCE INSUFFICIENT TO ESTABLISH I KNOWINGLY OR INTENTIONALLY POSSESSED ANY MARIJUANA AS CHARGED AGAINST ME IN PLAIN VIOLATION OF MY 14th AMENDMENT FEDERAL RIGHTS TODUE PROCESS OF LAW (SUBSTANTIVE), DUE PROCESS OF LAW (PROCEDURAL) HUDSON, SUPRA. ; BROUSSARD, SUPRA. ; SMITH V. RABALAIS, 659 F. 2d 542-547; RICHARDS V. DRETKE, 394 F.3d 291, 293 (5th Cir.2005) WALPOLE HILL, SUPRA. ; AKE, SUPRA..

13) CAPT. B. LAMB, WHILE ALLURING IN CAPT. HAZEL K. ENGLISH PLAINLY KNEW THE ALLEGED TESTIMONY (IF ANY EXISTED) OF REGINALD SHACLEFORD WOULD NOT PASS LEGITIMATE AGENCY SCRUTINY REQUIRED TO ESTABLISH RELIABILITY , CREDIBILITY OF THE INFORMANT (REGINALD SHACKLEFORD) IN A MANNER ADEQUATE TO PROTECT MY DUE PROCESS OF LAW RIGHTS, OR AGENCY INTEGRITY IN FAIR DISCIPLINARY PROCEEDINGS BECAUSE BOTH LAMB AND ENGLISH KNEW THAT THE ALLEGED MARIJUANA WAS ACTUALLY, FACTUALLY FOUND IN THE INFORMANTS HOUSING CUBICLE AREA "AFTER INFORMANT FAILED A URINALYSIS"; and was questioned about the RESULTS OF SAID URINALYSIS; SAID INFORMANT ALSO FALSLY INVOLVED TWO AGENCY OFFICERS WHO BECAME ANGRY ABOUT CAPT. LAMB ACCEPTING THE OFFENDERS TESTIMONY OVER THEIRS AND THEN QUIT THEIR JOBS AT EASTHAM UNIT. ALL OF THE ABOVE AND FORGOING PLAINLY DIS CREDIT NOT ONLY SHACLEFORD RELIABILITY BUT AGENCY INTEGRITY WAS CAST INTO SERIOUS JEOPARDY BY COLLUSIVE ACTIONS FURTHERING THE FRAUD BY CAPT. B. LAMB AND CAPT. HAZEL KITCHENS ENGLISH. THE RESULTING DISCIPLINARY HEARING CONVICTION MUST NOT BE ALLOWED TO STAND IN LIGHT OF SUCH OBJECTIVE PERFDY ON BEHALF OF CAPT. B. LAMB..

RESPECTFULLY SUBMITTED,

X-----

## TDCJ DISCIPLINARY REPORT AND HEARING RECORD

CASE: 20080141627 TDCJNO: 00750231 NAME: JOHNSON, TORY DAMON EA: 12.9  
 UNIT: EA HSNB: DORM 08 062 JOB: JANITOR BUILDING 2ND IQ: 085  
 CLASS: B3 CUST: 12 PRIMARY LANGUAGE: ENGLISH AHRM RESTRICTIONS: NO  
 GRADE: MA / MB EFF. DATE: 01/28/08 10:00 AM LOCATION: EA 08 DORM  
 TYPE: ID

## OFFENSE DESCRIPTION

ON THE DATE AND TIME LISTED ABOVE, AND AT 08 DORM WINDOW SEAL, OFFENDER:  
 JOHNSON, TORY DAMON, TDCJ-ID NO. 00750231, POSSESSED MARIJUANA, NAMELY, 2 OZ OF  
 MARIJUANA.

CHARGING OFFICER: LAMB, B. CAPT.

SHIFT/CARD: 1 M

## DEFENDER NOTIFICATION

IF APPLICABLE INTERPRETER,

TIME &amp; DATE NOTIFIED: 1/28/08 3:00 PM BY: (PRINT) A. Oliver

YOU WILL APPEAR BEFORE A HEARING OFFICER 24 HOURS OR MORE AFTER RECEIPT OF THIS  
 NOTICE. DO YOU WANT TO ATTEND THE HEARING? YES NO IF NO, HOW DO YOU

PLEAD? GUILTY NO GUILTYOFFENDER NOTIFICATION SIGNATURE: Refused to sign DATE: 1/28/08

BY SIGNING BELOW, YOU GIVE UP YOUR RIGHT TO 24 HOUR NOTICE AND AUTHORIZE THE  
 HEARING OFFICER TO PROCEED WITH THE HEARING.

OFFENDER WAIVER SIGNATURE: DATE:

## HEARING INFORMATION

HEARING DATE: 1/30/08 TIME: 9:11 AM TAPE: 4395 SIDE# B START# 299 END# 550

COUNSEL SUBSTITUTE AT HEARING: AD TAPE# SIDE# START# END#

EXPLAIN BELOW BY NUMBER: (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF

HEARING, (2) IF ACCUSED OFFENDER WAS CONFINED IN PRE-HEARING DETENTION MORE THAN

72 HOURS PRIOR TO HEARING, (3) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE

EVIDENCE STAGE, (4) IF ANY WITNESSES OR (5) DOCUMENTATION WAS EXCLUDED FROM

HEARING (6) IF OFFENDER WAS DENIED CONFRONTATION AND/OR CROSS-EXAMINATION OF A

WITNESS AT THE HEARING (7) IF HEARING WAS NOT HELD WITHIN SEVEN DAYS, EXCLUDING

WEEK ENDS AND HOLIDAYS, FROM THE OFFENSE DATE AND, (8) IF INTERPRETER USED:

(SIGNATURE): Confidential statement to know name of employee used in theConfidential statement

OFFENSE CODES: 12.0

OFFENDER PLEA: (G, NG, NONE) NG

FINDINGS: (G, NG, DS)

REDUCED TO MINOR (PRIOR TO DOCKET) (DOCKET) (HEARING) BY: (INITIAL)

IF GUILTY, EVIDENCE PRESENTED, CONSIDERED, AND REASON(S) FOR DETERMINATION OF

GUILT: A) ADMISSION OF GUILT, B) OFFICER'S REPORT, C) WITNESS TESTIMONY, D) OTHER

EXPLAIN IN DETAIL: Officer's Report, Testimony, Photo, Testing resultsof marijuana, confidential informant

## PUNISHMENT

LOSS OF PRIV(DAYS) REPRIMAND SOLITARY(DAYS)

\* RECREATION(DAYS) EXTRA DUTY(HOURS) REMAIN LINE 3 53 53

\* COMMISSARY(DAYS) 45 CONT. VISIT SUSP THRU 43 REDUC CLASS FROM 53 TO 504

\* PROPERTY(DAYS) CELL RESTR(DAYS) 43 GOOD TIME LOST(DAYS)

\* (DAYS) SPECIAL CELL RESTR(DAYS) DAMAGES/FORFEIT.\$

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED

Unauthorized drugs will not be tolerated

CREDIT FOR PRE-HEARING DETENTION TIME? YES(DAYS) NO / NA 23

DATE PLACED IN PRE-HEARING DETENTION: 18 HEARING LENGTH (MINUTES)

OFFENDER SIGNATURE FOR RECEIPT OF FINAL REPORT: T. Johnson

HEARING OFFICER (PRINT) WARDEN STATE CLASS COMMITTEE MEMBER

(FORM 1-47MA) CONTACT COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM.



## Texas Department of Criminal Justice

## STEP 2

OFFENDER  
GRIEVANCE FORM

Offender Name: Johnson, Tori Damon TDCJ # 750231  
 Unit: Eastham Housing Assignment: I-3-06  
 Unit where incident occurred: Eastham Disciplinary Comm.

## OFFICE USE ONLY

Grievance #: 2008087097  
 UGI Recd Date: FEB 15 2008  
 HQ Recd Date: FEB 21 2008  
 Date Due: 3-21-08  
 Grievance Code: 408/405/410  
 Investigator ID #: 21057  
 Extension Date: 4-25-08

You must attach the completed Step 1 Grievance that has been signed by the Warden for your Step 2 appeal to be accepted. You may not appeal to Step 2 with a Step 1 that has been returned unprocessed.

Give reason for appeal (Be specific). I am dissatisfied with the response at Step 1 because... Appeal # 2008087097

Captain B. LAMB and Captain H. Kitchens English have PLAINLY, OBJECTIVELY violated my United States of America Constitutional Right to "Due Process of Law"; "Compulsory Process for Witnesses"; "Confrontation of my Accusers(s)" Knowingly, and with criminal intent to do so. Warden G. Oliver is either incompetent to conduct his professional duties pertaining to impartial review of disciplinary proceedings or has knowingly, with criminal intent, freely chosen to support and encourage such constitutional right violations and therefore is guilty of conspiracy to further violate my U.S. Constitutional rights above referenced. All in plain, objective violation of Texas Employee Conduct Code, PD-21 § 43 On/off Duty Conduct calculated to jeopardize and jeopardizing Agency (TDCJ-CID) integrity and professional conduct of Agency program operations (Grievance Procedures) and the First, Fifth, Fourteenth Amendments to our Constitution of United States of America.



Offender Signature: Joy Johnson # 750231Date: Feb. 13, 2008

## Grievance Response:

Major Disciplinary Case # 20080141627 has been reviewed. The disciplinary charge for code 12.0 was appropriate for the offense and the guilty verdict was supported by a preponderance of the evidence. All due process requirements were satisfied and the punishment assessed by the Disciplinary Hearing Officer was within agency guidelines. You were properly advised at Step 1. No further action is warranted in this matter. JC-D

Signature Authority:

V. L. BRISHER  
 V. L. BRISHER, ASST ADMINISTRATOR

Date:

MAR 06 2008

Returned because: *\*Resubmit this form when corrections are made.*

- ☐ 1. Grievable time period has expired.
- ☐ 2. Illegible/Incomprehensible. \*
- ☐ 3. Originals not submitted. \*
- ☐ 4. Inappropriate/Excessive attachments. \*
- ☐ 5. Malicious use of vulgar, indecent, or physically threatening language. \*
- ☐ 6. Inappropriate. \*

CGO Staff Signature: \_\_\_\_\_

## OFFICE USE ONLY

Initial Submission

CGO Initials: \_\_\_\_\_

Date UGI Recd: \_\_\_\_\_

Date CGO Recd: \_\_\_\_\_

(check one) ☐ Screened ☐ Improperly Submitted

Comments: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

2<sup>nd</sup> Submission

CGO Initials: \_\_\_\_\_

Date UGI Recd: \_\_\_\_\_

Date CGO Recd: \_\_\_\_\_

(check one) ☐ Screened ☐ Improperly Submitted

Comments: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

3<sup>rd</sup> Submission

CGO Initials: \_\_\_\_\_

Date UGI Recd: \_\_\_\_\_

Date CGO Recd: \_\_\_\_\_

(check one) ☐ Screened ☐ Improperly Submitted

Comments: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_



## Texas Department of Criminal Justice

# STEP 1 OFFENDER GRIEVANCE FORM

OFFICE USE ONLY	
Grievance #:	2008087097
Date Received:	FEB 05 2008
Date Due:	3-14-08
Grievance Code:	408/405/410
Investigator ID #:	20340
Extension Date:	NONE
Date Ret'd to Offender:	FEB 13 2008

Offender Name: JOHNSON, TORY DAMON TDCJ #: 750231Unit: EASTHAMHousing Assignment: 8 DORM. 1/35Unit where incident occurred: 8 DORM. GENERAL AREA..

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.

Who did you talk to (name, title)? APPEAL FROM DISCIPLINARY ACTION When? 1/30/2008What was their response? N/AWhat action was taken? N/A

State your grievance in the space provided. Please state who, what, when, where and disciplinary case number if appropriate.

I AM APPEALING DISCIPLINARY ACTION IN CASE # 20080141627 ON BASIS

OF NUMEROUS 'DUE PROCESS OF LAW' VIOLATIONS, AS LISTED INFRA:  
 1) CAPTAIN B. LAMB ACTED IN CAPACITY OF "INVESTIGATING OFFICER" ; "CHARGING OFFICER" ; "DISCIPLINARY HEARING OFFICER" a priori IN THIS CASE WHICH PLAINLY DENIED ME NEUTRAL , IMPARTIAL DISCIPLINARY HEARING OFFICER FOR FACT FINDING PROCESSES. (1st ; 5th; 6th , 14th Amends. U.S.C.A.)..

WOLFF V. McDONNELL , 478 US 539 (1984) ; RUIZ V. ESTELLE, 666 F2d 854, 869 ( 5th Cir. 1982) , see "HEARING TAPE # 4595 B, Lines 299 thru 550..

2) CAPTAIN B. LAMB , ACTING IN CONJUNCTION WITH EASTHAM DISCIPLINARY CAPTAIN HAZEL KITCHENS ENGLISH, DENIED , OVER OBJECTIONS, MY "DUE PROCESS OF LAW" RIGHTS TO COMPULSORY PROCESS FOR WITNESSES IN MY BEHALF , WHO WERE PRESENT AT ALLEGED SCENE OF CHARGED INCIDENT.. (OFFENDERS ).. WOLFF , SUPRA..

3) CAPTAIN B. LAMB IN CONJUNCTION WITH CAPTAIN HAZEL KITCHENS ENGLISH DID FURTHER DENY ME , OVER OBJECTIONS , MY "DUE PROCESS OF LAW" RIGHTS TO CONFRONTATION OF ADVERSE STATE WITNESSES AGAINST ME ( INFORMANT REGINALD SHACKLEFORD-'OFFENDER', and 8 DORM. SUPERVISOR-AGENCY) WOLFF, SUPRA.

4) CAPTAIN LAMB, IN CONJUNCTION WITH CAPTAIN HAZEL KITCHENS ENGLISH , DID DENY, OVER MY OBJECTION, MY "DUE PROCESS OF LAW "RIGHT TO FINGERPRINT ANALYSIS OF ALLEGED CONTAINER SUSPECT CONTRABAND WAS INSIDE OF AT TIME OF DISCOVERY, SAID CONTRABAND BEING CHARGED AS BEING IN MY OBJECTIVE POSSESSION, AKE V. OKLAHOMA, 470 US 68 (1985).. ; WOLFF, SUPRA..

5) CAPTAIN B. LAMB , OVER OBJECTIONS, DENIED ME MY "DUE PROCESS OF LAW" RIGHT TO EXPERT ANALYSIS OF SUSPECT "GREEN LEAFY SUBSTANCE" ALLEGED TO BE MARIJUANA POSSESSED BY ME, WHILE ADMITTING TO "TESTING SAME HIMSELF", NOT BEING PROFESSIONALLY QUALIFIED TO DO SO IN FIRST INSTANCE.. AKE V. OKLAHOMA, SUPRA, ; WOLFF, SUPRA..

6) CAPTAIN B. LAMB, ACTING IN CONJUNCTION WITH CAPTAIN HAZEL KITCHENS ENGLISH, DID DENY ME MY "DUE PROCESS OF LAW" RIGHTS TO BE CONVICTED OF DISCIPLINARY OFFENSE WHEN THERE WAS NO EVIDENCE I KNOWINGLY , OR INTENTIONALLY POSSESSED ALLEGED CONTRABAND. TEAGUE V. QUARTERMAN, F3d ( 5th Cir. 2007) ; WOLFF, SUPRA. ; AKE, SUPRA.. RICHARDS V. DRETKE, 394 F3d 291 , 293 (5th Cir. 2005)..; BROUSSARD V. JOHNSON, 253 F3d 874 (5th Cir. 2001)

7) EVIDENCE NON-COMPETENT STATURE RENDERED SAME INSUFFICIENT TO SUSTAIN DISCIPLINARY CONVICTION OF KNOWING, INTENTIONAL POSSESSION OF CONTRABAND SUBSTANCE IN VIOLATION OF MY 14th AMENDMENT "DUE PROCESS OF LAW" GUARANTEE HUDSON V. JOHNSON, 242 F3d 534, 535 (5th Cir. 2001); BROUSSARD V. JOHNSON 918 F. SUPP. 1040 (E. DT. TEX. 2000); SMITH V. RABALAIS, 659 F2d 542-547 RICHARDS, SUPRA.; BROUSSARD, SUP RA.; MASS. INST. V. WALPOLE HILL, 472 US 445; 105 S. CT. 2768, 2774 (1985).. AKE V. OKLAHOMA, Supra.

8) AGENCY PROCEDURE RELIED UPON TO ESTABLISH RELIABILITY, CREDIBILITY OF INFORMANT INADEQUATE TO PROTECT MY DUE PROCESS OF LAW RIGHTS IN LIGHT OF CAPTAIN B. LAMB, CAPTAIN HAZEL KITCHENS ENGLISH PERSONAL KNOWLEDGE CONTRABAND WAS FOUND IN WINDOW SILL ABOVE INFORMANTS CUBICLE NEXT TO MY CUBICLE AND INFORMANT "TESTED POSITIVE URINALYSIS" WHILE I TESTED "NEGATIVE URINALYSIS" FOR MARIJUANA THC IN OUR URINE SPECIMENS. INFORMANT "TRANSFERRED" "NEXT DAY" TO ANOTHER UNIT.. THUS, EVIDENCE COULD NOT SUPPORT DISCIPLINARY HEARING FINDING OF GUILTY ON MY BEHALF..

**Action Requested to resolve your Complaint.**

CASE # 20080141627 dismissed, expunged from my record, all prior status RESTORED.

Offender Signature: George Johnson #750231

Date: February 4th 2008

**Grievance Response:**

: Disciplinary case # 20080141627 has been reviewed. It appears that sufficient evidence has been presented to support the finding of guilt and penalty imposed. No significant due process or apparent procedural errors to warrant overturning this case.

Signature Authority: Warden Oliver

**WARDEN G. OLIVER**

Date: FEB 13 2008

If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response. State the reason for appeal on the Step 2 Form.

Returned because: \*Resubmit this form when corrections are made.

- ☐ 1. Grievable time period has expired.
- ☐ 2. Submission in excess of 1 every 7 days.\*
- ☐ 3. Originals not submitted.\*
- ☐ 4. Inappropriate/Excessive attachments.\*
- ☐ 5. No documented attempt at informal resolution.\*
- ☐ 6. No requested relief is stated.\*
- ☐ 7. Malicious use of vulgar, indecent, or physically threatening language.\*
- ☐ 8. The issue presented is not grievable.
- ☐ 9. Vacant - discontinued 9-1-00
- ☐ 10. Illegible/Incomprehensible.\*
- ☐ 11. Inappropriate.\*

UGI Signature: \_\_\_\_\_

☆I-127 Back (Revised 9-1-2001)

**OFFICE USE ONLY****Initial Submission**

UGI Initials: \_\_\_\_\_

Grievance #: \_\_\_\_\_

Screening Criteria Used: \_\_\_\_\_

Date Rec'd from Offender: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

**2nd Submission**

UGI Initials: \_\_\_\_\_

Grievance #: \_\_\_\_\_

Screening Criteria Used: \_\_\_\_\_

Date Rec'd from Offender: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

**3rd Submission**

UGI Initials: \_\_\_\_\_

Grievance #: \_\_\_\_\_

Screening Criteria Used: \_\_\_\_\_

Date Rec'd from Offender: \_\_\_\_\_

Date Returned to Offender: \_\_\_\_\_

TORY DAMON JOHNSON, # 750231

v.

NATHANIEL QUARTERMAN, DIRECTOR, T.D.C.J.-C.I.D..

A F F I D A V I T

(STATE OF TEXAS)  
(COUNTY OF HOUSTON)

I, TORY DAMON JOHNSON #750231, UNDERSIGNED, DO HEREBY, HEREIN SWEAR UPON OATH, UNDER PENALTY OF PERJURY, ACCORDING TO LAW, THAT THE FOLLOWING STATEMENTS OF FACT, AVERMENTS, DECLARATIONS ARE TRUE, CORRECT BEING BASED UPON MY OWN PERSONAL KNOWLEDGE, AND EXPERIENCE..

1) I AM OFFENDER NAMED IN EASTHAM UNIT (TEXAS DEPT. OF CRIMINAL JUSTICE, CORRECTIONS INSTITUTIONAL DIVISION [AGENCY]) "DISCIPLINARY ACTION # 20080141627 PRESENTLY BEING LITIGATED ON HABEAS CORPUS REVIEW, EASTERN DISTRICT, LUFKIN DIVISION,

2) ON, ABOUT JANUARY 30, 2008 I WAS ERRONEOUSLY FOUND GUILTY OF "POSSESSING MARIJUANA". I HAVE NEVER BEEN ARRESTED FOR OR CONVICTED FOR ANY DRUG RELATED CRIME BEFORE IN MY LIFE.

3) I AM WELL OVER 21 YEARS OF AGE AND HAVE NEVER INDULGED IN DRUG ABUSE OF ANY KIND.

4) ON JANUARY 28, 2008 I WAS ASSIGNED LIVING QUARTERS ON 8 DORM. AREA WITH APPROXIMATELY 80 OTHER OFFENDERS WHO ENJOYED REASONABLE ACCESS AT VARYING TIMES TO ANY AREA ON 8 DORM. PERIMETERS.

5) I HAVE PERSONAL KNOWLEDGE DISCOVERED AFTER MY DISCIPLINARY HEARING WAS OVER THAT CAPT. B. LAMB AND FORMER EASTHAM CAPT. C. TUCKER, CONSPIRED TO VIOLATE ANOTHER OFFENDERS (2 OFFENDERS) DUE PROCESS OF LAW RIGHTS IN SIMILAR FASHION BUT DEPLOYING MORE SUBTLE TACTICA (TUCKER TESTIFIED HE RECEIVED "ANONYMOUS TIP" AT DISCIPLINARY HEARING WHEN IN FACT HE AND OTHER INVOLVED OFFICERS DID KNOW THE INFORMANTS IDENTITY). SEE: MOURNING V. DRETKE, # 9-05 CV 247 (E. Dist. TEX. 2006) "AFFIDAVIT" OF JAMES DALE MOURNING ..( pg,s 2 , 3 at para. 4)

6) FURTHERMORE, TWO YEARS EARLIER CAPT. B. LAMB, THEN A LIEUTENANT, WAS INVOLVED IN ANOTHER FRAUDULENT DISCIPLINARY PROCEEDING, LOPEZ V DIRECTOR, TDCJ-CID (cite available) ALSO IN THE EASTERN DISTRICT COURT HERE..

I HAVE A SOUND, SECURE BELIEF THAT I WAS DENIED DUE PROCESS OF LAW RIGHTS THROUGHOUT MY DISCIPLINARY HEARING IN CASE # 20080141627

AND ALSO THAT WARDEN G. OLIVER ; ASSISTANT GRIEVANCE COORDINATOR V. L. BRISHER ACTED IN CONCERT TO "COVER UP" EASTHAM AGENCY OFFICERS CAPT. B. LAMB , CAPT. HAZEL KITCHENS ENGLISH PERFIDIOUS ACTIONS IN VIOLATING MY FEDERAL RIGHTS TO DUE PROCESS OF LAW IN INSTITUTIONAL DISCIPLINARY ACTIONS AGAINST ME IN OBJECTIVELY KNOWING, AND CRIMINALLY INTENTIONAL MANNER.

7) THE WITNESSES DENIED ME BY CAPT. LAMB, HAZEL K. ENGLISH WERE MATERIAL IN NATURE , SCOPE IN THAT THEY WERE ABLE TO TESTIFY FROM PERSONAL KNOWLEDGE THAT (A) DURING THE ORIGINAL 'SHAKEDOWN' OF MY 8 DORMITORY CUBICLE SOME THREE OFFICERS , INCLUDING CAPT.

B. LAMB RIGOROUSLY TOOK MY CUBICLE APART AND FOUND "ABSOLUTELY NO NO DRUG CONTRABAND ; CAPT. LAMB THEN LEFT THE AREA ( WENT AND TOLD SHACKLEFORD HE WAS LYING, AT WHICH TIME SHACKLEFORD GAVE CAPT. LAMB SPECIFIC INSTRUCTIONS ON HOW TO FIND THE CONTRABA MARIJUANA) AND RETURNED TO MY CUBICLE , "WALKED INSIDE MY CUBICLE ALONG THE WALL NEXT TO SHACKLEFORD CUBICLE, STEPPED UP ON EDGE OF MY BUNK AND LEANED WAY OVER INSIDE SHACKLEFORD CUBICLE AREA, UP ON WINDOW FRAME IN SHACKLEFORD CUBICLE AREA AND RETRIEVED THE SUSPECT MARIJUANA...".. THE ALLEGED MARIJUANA "NEVER WAS INSIDE MY CUBICLE AREA BUT INSIDE SHACKLEFORD,S".

RESPECTFULLY SUBMITTED,

*Tory Damon Johnson #750231*  
 TORY DAMON JOHNSON  
 # 750231

#### V E R I F I C A T I O N

I, TORY DAMON JOHNSON # 750231 BEING PRESENTLY INCARCERATED AT THE EASTHAM UNIT, TEXAS DEPARTMENT CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONAL DIVISION LOCATED IN HOUSTON COUNTY , TEXAS AT 2665 PRISON RD. # 1 , lovelady , texas 75851 do hereby swear UPON OATH UNDER PENALTY OF PERJURY , ACCORDING TO LAW THAT THE FOREGOING STATEMENTS OF FACT, AVERMENTS, DECLARATIONS ARE TRUE AND CORRECT BASED UPON MY OWN PERSONAL KNOWLEDGE, EXPERIENCE.

*Tory Damon Johnson #750231*  
 TORY DAMON JOHNSON  
 # 750231